

Chesapeake Bay Preservation Act

**Joint Board of Supervisors/
Planning Commission
Meeting
May 5, 2010**





Background

- The Board of Supervisors has indicated that water quality protection is vital to the future of Loudoun County and have included it as one of the key components of their Strategic Plan.
- The current Revised General Plan includes a policy indicating that the County will consider adoption of the environmental regulations of the Chesapeake Bay Preservation Act (CBPA).



Background

- On December 1, 2008 and February 17, 2009 the Board of Supervisors conducted Committee of the Whole Meetings on Water Quality Protection to explore water quality protection options.
- The Board reviewed existing ordinances (FOD, SCVB), the previous RSCOD, and several CBPA options.
- The Board approved the Chesapeake Bay Preservation Act Work Program on April 7, 2009.



Background

- The Board appointed 13 stakeholders representing agricultural, urban, and environmental groups to assist with implementation of the Work Program.
- May 20, 2009 Stakeholder Roundtable (prior to drafting the amendments).
- September 2009 Agency Referral.
- December 3, 2009 Stakeholder Roundtable (to obtain feedback on the draft amendments).



Background

- On December 15, 2009, the Board approved the Intent to Amend to implement and employ certain portions of the Chesapeake Bay Preservation Area Designation and Management Regulations, and other criteria, promulgated pursuant to the Chesapeake Bay Preservation Act.



Planning Commission

- January 28, 2010 Planning Commission Public Hearing.
- The Planning Commission met on February 16, February 25, and March 3, 2010 to discuss the draft amendments.
- During the March 3, 2010 Work Session, the Planning Commission referred the draft amendments to subcommittee for further review.



Planning Commission

- The subcommittee met on March 11, March 13, March 16, and March 18, 2010 and reported their findings to the Planning Commission on March 31, 2010.
- The Planning Commission continued discussion of the draft amendments on April 19, 2010.
- A number of stakeholders participated at the meetings and contributed background materials and expertise.



Planning Commission

- During the April 19, 2010 Meeting, the Planning Commission:
 - Completed its review of the 183 items outlined in the Stakeholder/Planning Commission/Public Hearing Comment Matrix, and
 - Directed staff to prepare clean versions of the draft amendments incorporating all of the text amendments discussed to date.



Planning Commission

- The Planning Commission was scheduled to continue its review during the April 28, 2010, Work Session, but postponed consideration and action on the draft amendments to the May 12, 2010, Work Session, due to time constraints associated with that evening's public hearing.



Outreach

- 15 presentations on the Work Program to date for agricultural, environmental, and urban groups, including:
 - Farm Bureau
 - Ag Summit Group
 - Economic Development Commission
 - Chamber of Commerce
 - Dulles Area Association of Realtors
 - Loudoun Environmental Coalition
- January 13, 2010 HOA Outreach Session. Invitations mailed to 166 HOAs.



Amendments

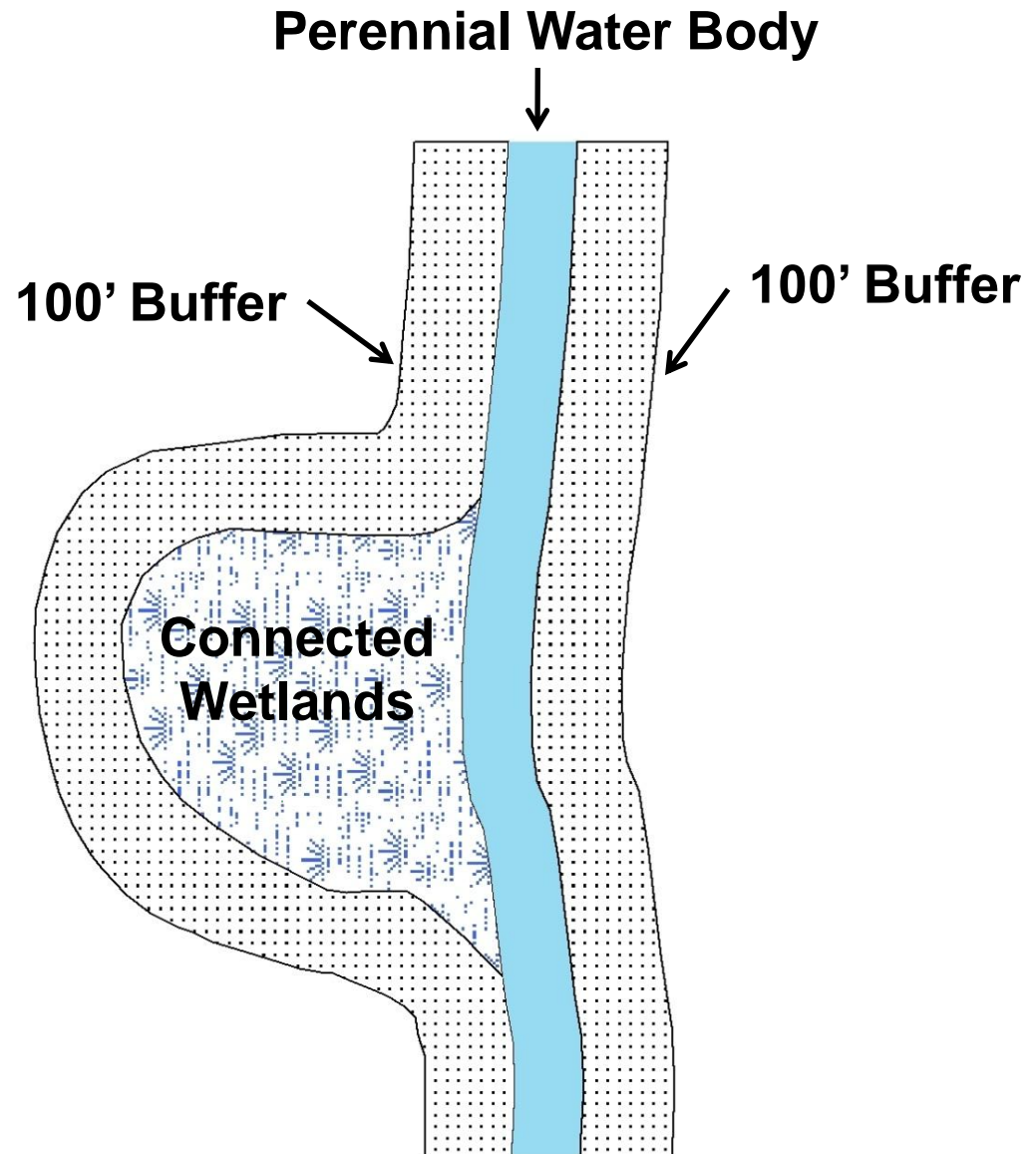
- The Work Program encompasses amendments to the following documents:
 - The Codified Ordinances, including new Chapter 1222
 - The Zoning Ordinance
 - The Facilities Standards Manual
 - The Revised General Plan
- Text edits proposed by the Planning Commission during the April 19, 2010 Work Session and subsequent staff edits are highlighted in yellow.



Key Elements

- Chesapeake Bay Preservation Areas:
 - **Resource Protection Area (RPA):**
 - *Wetlands connected to perennial water bodies, and*
 - *A 100-foot buffer located adjacent to and landward of perennial water bodies and connected wetlands.*
 - *The RPA is not measured from the floodplain boundary.*
 - **Resource Management Area (RMA):**
 - *All land outside the RPA.*

Resource Protection Area





Stream Assessment

- Evaluated water quality at 200 benthic/ 500 habitat sites from March – July 2009.
- Countywide, the assessment found that statistically 78% of the stream miles are stressed or severely stressed, and would be considered impaired according to the Department of Environmental Quality's (DEQ) water quality standards.
- The habitat study revealed that 75% of stream miles are suboptimal according to DEQ habitat assessment protocols.



RPA Functions

- Wetlands and stream buffers:
 - filter pollutants from runoff,
 - prevent erosion,
 - store and dissipate floodwaters,
 - provide habitat for a variety of plants and animals, and
 - provide shade and organic matter necessary to sustain aquatic habitat.
- The 100-foot buffer is deemed to achieve a 75% reduction of sediment and a 40% reduction of nutrients.



Performance Criteria

1. SWM/BMP maintenance
2. 2,500 sf Plan of Development
3. 2,500 sf E&S Threshold
4. 5-year septic pump-out
5. 100% Reserve Drainfield
6. Stormwater Management (Chapter 1096)
7. State and Federal Wetland Permits
8. Minimize Land Disturbance
9. Preserve Indigenous Vegetation
10. Minimize Impervious Cover

The Agricultural Conservation Assessment was not included in the Work Program.



Key Elements

- The regulations have been successfully implemented in the 84 Tidewater localities, including Prince William and Fairfax County, since the early 1990's with minimal regulatory changes.
- Staff had the opportunity to consult adopted ordinances from multiple localities and to discuss the proposed amendments with staff from the Chesapeake Bay Local Assistance Division and the Tidewater localities while developing the draft amendments.



Discussion Topics

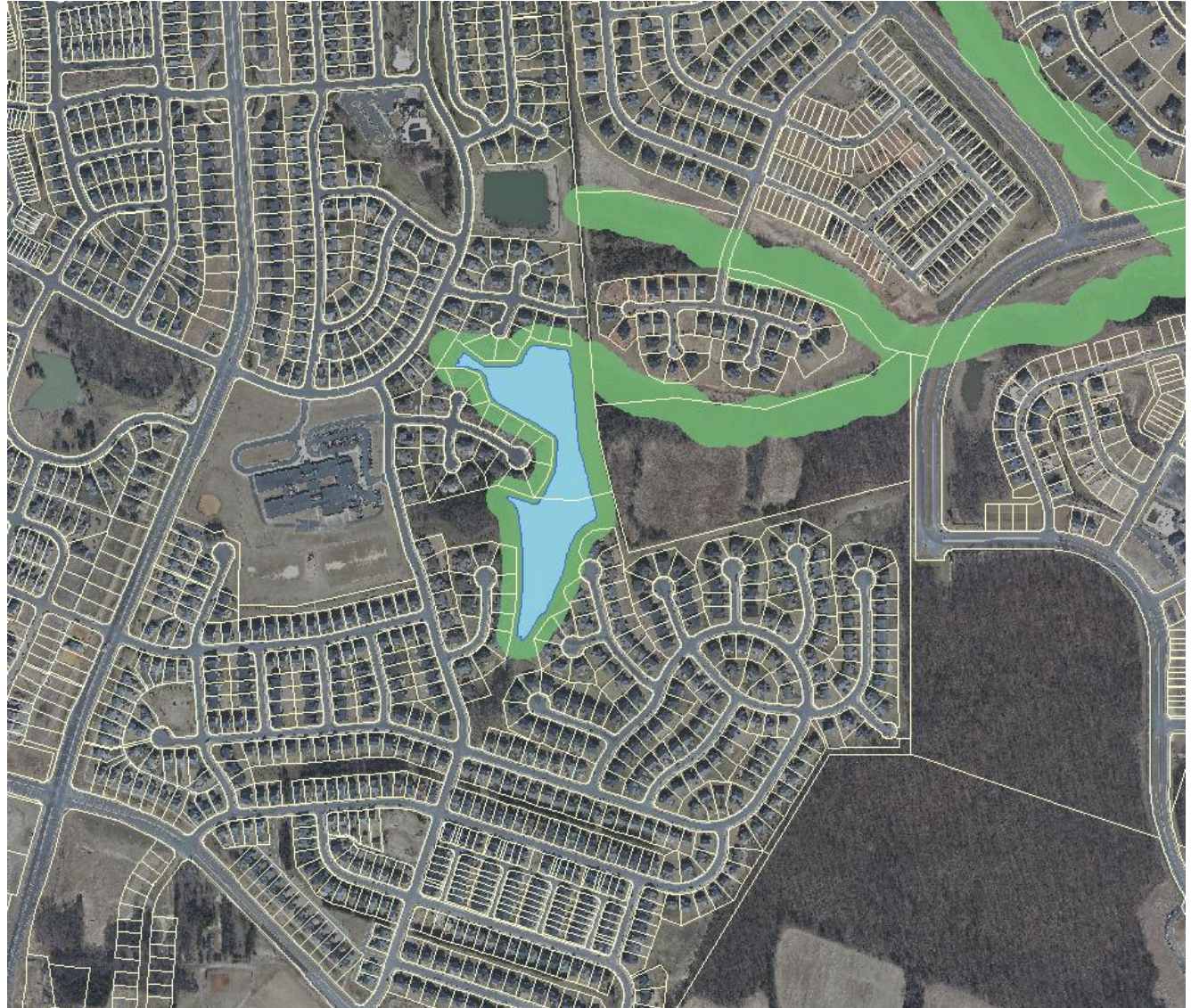
1. Mapping the RPA
2. Intensely Developed Areas (IDAs)
3. 2,500 sf E&S Threshold
4. Administrative Waivers
5. Accessory Structures/Exceptions
6. Grandfathering



Mapping the RPA

- The state regulations require that the County provide a map of the “general extent” of the RPA and RMA.
- The CBPA map identifies perennial streams and water bodies based upon the Countywide soil survey and the 100-foot buffer.
- It does not identify potential connected wetlands. These areas could not be identified using existing data without considerably overestimating the extent of the RPA.

Mapping the RPA





Mapping the RPA

- Analysis of the CBPA map indicates that approximately:
 - 8 percent of the land area within the County contains RPA,
 - 10 percent of the parcels within the County contain RPA, and
 - 40 percent of the land within the RPA also lies within the Major Floodplain.



Mapping the RPA

- The RPA identified on the CBPA map is used to evaluate projects that disturb 2,500 sf of land or less.
- Overestimating the extent of the RPA would adversely affect small projects and agricultural activities. In addition, a site-specific RPA delineation is required for larger projects.



Mapping the RPA

- Properties containing RPA shown on the adopted CBPA map will be flagged with Zoning Permit applications proposing land disturbing activity of 2,500 sf or less and a locational clearance will be required to ensure compliance with the RPA.
- An RPA delineation is required for disturbances in the RPA and may be required for land disturbing activity $>2,500$ sf in the RMA.
- The RPA delineation provides a site-specific evaluation of the extent of the RPA on the property.



Mapping the RPA

- DCR guidance authorizes localities to adopt a screening process so that RPA delineations will not be required where there are no streams or water bodies in the vicinity of the proposed project.



Mapping the RPA

- The draft amendments include a provision allowing the RPA delineation to be waived where there are no streams or water bodies with the potential to be characterized as RPA within the limits of land disturbing activity or within 200 feet of those limits.
- This provision only applies to grading permits associated with individual single family detached dwellings and associated accessory structures and agricultural structures; it does not apply to legislative and by-right development applications.



Mapping the RPA

- Staff has developed an RPA Screening Tool depicting areas within 200 feet of all streams and water bodies using base map drains (from aerial photography).
- Approximately 50 percent of the land area within the County lies within the area included in the RPA Screening Tool.
- The RPA Screening Tool is one component of the screening method that staff will use to identify if and where an RPA delineation will be required for disturbances >2,500 sf in the RMA.

Mapping the RPA





Intensely Developed Areas

- IDAs may be designated in areas of existing development where little of the natural environment remains and redevelopment is planned.
- The Rt.28 corridor does not meet IDA designation requirements.
- The IDA allows the RPA buffer to be reduced in width. However, redevelopment is already permitted within the RPA, provided there is no further encroachment.



2,500 sf E&S Threshold

- The draft amendments reduce the E&S threshold requiring a grading permit from 5,000 sf “commercial, townhome, condominium” and 10,000 sf “other,” to 2,500 sf.
- Grading permit fees and bond requirements apply.



2,500 sf E&S Threshold

- Tiered implementation minimizes costs for dwellings, accessory structures, and agricultural structures:
 - RPA delineation can be waived where the proposed disturbance is not located within 200 feet of a stream or water body.
 - An engineered plan is only required for disturbances $>2,500$ sf within the RPA or within 100 feet of the delineated RPA.



Administrative Waivers

- New dwellings are permitted in the RPA by administrative waiver on legally existing lots of record where application of the buffer would result in the loss of a reasonable buildable area.
- Decks and additions up to 2,500 square feet are also permitted in the RPA by administrative waiver.



Accessory Structures

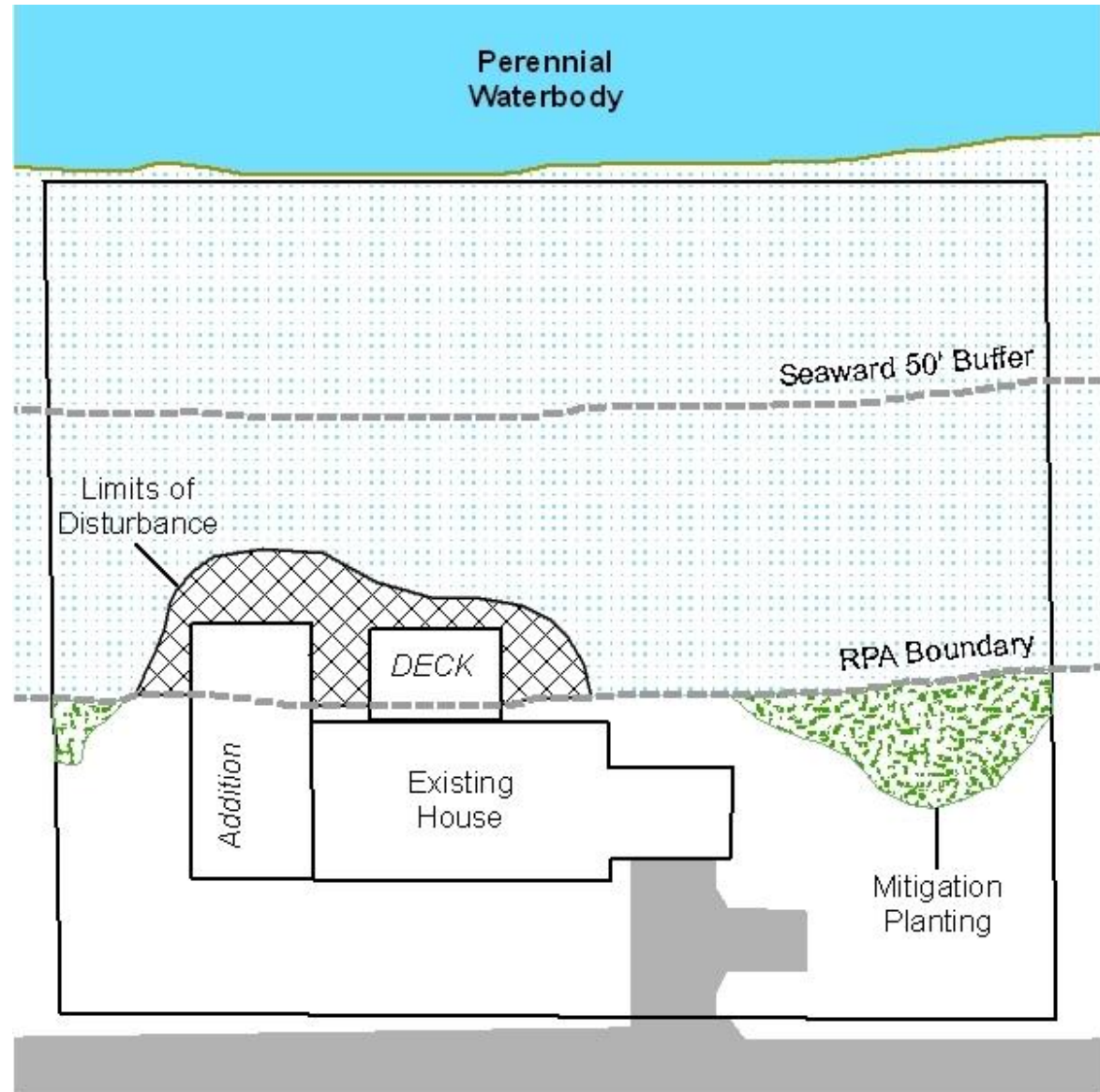
- Detached accessory structures (e.g., garages, sheds, gazebos, patios, pools) are not permitted within the RPA by-right or via an administrative waiver. An exception is required.
- Exceptions are reviewed at a public hearing by the Chesapeake Bay Review Board, appointed by the Board of Supervisors, based upon a series of findings outlined in the Chesapeake Bay Preservation Ordinance.



WQIA

- A Water Quality Impact Assessment is required for proposed disturbances within the RPA (except exempt uses) to identify impacts and mitigation.
- Minor WQIA:
 - 2,500 sf or less in landward 50-feet.
 - Non-engineered plan and staff RPA delineation.
- Major WQIA:
 - >2,500 sf or seaward 50-feet.
 - Engineered plan, consultant RPA delineation and Tree Cover Inventory.

Additions in the RPA





RPA Analysis

- Analysis of the CBPA map indicates that approximately:
 - 3 percent of existing structures and 2 percent of structures with a street address fall within the RPA.
 - 4 percent of existing structures and 3.5 percent of structures with a street address fall within the RPA and the first 25-feet adjacent to the RPA.



RPA Requirements

- Lots served by public water and sewer:
 - Lots <20,000 sf shall be located outside the RPA.
 - Lots >20,000 square feet shall contain a minimum of 20,000 sf outside the RPA.
- Lots not served by public water and sewer:
 - Lots <40,000 sf shall be located outside the RPA.
 - Lots >40,000 sf shall contain a minimum of 40,000 sf outside the RPA.
- This requirement shall not affect density.



Grandfathering

- The Virginia Code (15.2-2261.E.) requires that approved site plans and record plats comply with the regulations to the “greatest extent possible.”
- The County Attorney’s Office has developed a draft grandfathering policy based upon the 2003 Fairfax County Board Policy adopted in conjunction with accompanying Chesapeake Bay Preservation Ordinance amendments for discussion by the Board.



Additional Information

**Loudoun County Chesapeake Bay Act
Work Program Website**

www.loudoun.gov/ChesapeakeBay

General Inquiries

Chesapeake Bay Information Line: 703-777-0655

Email: ChesBay@loudoun.gov

